

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEBRASKA

UNITED STATES OF AMERICA,)	8:09CR391
)	
Plaintiff,)	
)	
vs.)	MEMORANDUM AND ORDER
)	
JUSTIN DANIELS,)	
)	
Defendant.)	

Before I sentence him, the defendant is in need of a thorough medical and mental evaluation. I next briefly explain why that is so.

The defendant is 27 years old. He is charged with, and has entered a plea of guilty to, possession of a short shotgun. While all misdemeanors, the defendant has a significant criminal history, and he presently stands in criminal history category VI. (Presentence Report (PSR) ¶ 53.) The defendant has never been to prison, although he has had numerous stints in county jails. With a total offense level of 17, the defendant is facing 51 to 63 months in prison under the advisory Guidelines. (*Id.* at ¶ 104.)

The defendant went to the ninth grade in school. Records indicate that the defendant has given a history of suffering “multiple head injuries secondary to [childhood] abuse plus many head injuries from fights.” (Filing 38-1 at CM/ECF p. 4. (Psychiatric Diagnostic Evaluation, Lanning Center for Behavioral Services).) He reports that he tried to hang himself at age 7 and there appears to be little doubt that the defendant experienced a chaotic and physically abusive home environment as a child. (*Id.*) The defendant has been variously diagnosed as suffering from major depression with mild psychotic features, resolved to major depression (*id.* at CM/ECF

p. 9), and bipolar disorder with mild psychotic symptoms (*Id.* at CM/ECF p. 12).¹ The defendant has been prescribed various psychiatric medications including Seroquel, Klonopin, Celexa, and Trazadone. (*Id.* at CM/ECF p. 15.)

The defendant's very experienced (court appointed) lawyer has filed a motion for variance or departure. The lawyer argues that: (1) the undersigned should be lenient because the defendant has received only sporadic treatment for his mental illness; (2) the undersigned should be lenient because the defendant only possessed the short shotgun for protection and not to engage in criminal activity; (3) the undersigned should be lenient because the defendant's criminal history is overstated and probably the result of reduced mental capacity; and (4) rather than a prison sentence, the undersigned should place the defendant in a structured community based treatment facility with sufficient strictures to encourage compliance with treatment requirements.

Under these circumstances, and with the agreement of both parties,

IT IS ORDERED that:

1. The United States Bureau of Prisons shall designate a medical center for federal prisoners at which the defendant shall be examined pursuant to this order. Upon such designation, the defendant, who is in

¹The defendant also claims to have been diagnosed as suffering from schizophrenia with auditory hallucinations (hearing his mother's voice) at age 18. (Filing 38-1 at CM/ECF p. 14 (Rick McNeese, PhD).) That claim may be well-founded inasmuch as the defendant clearly decompensated when his psychiatric medications were withdrawn at our jail. At that time, he claimed to hear his mother's voice in his head. (*Id.*) As a result, he was returned to his psychiatric medications after a psychologist examined the defendant and recommended that the medications be restarted. I observed the defendant while off his medications and from a lay perspective it does appear that without his psychiatric medications the defendant has definite difficulty functioning.

custody, shall be transported to the place designated by the Bureau of Prisons by the U.S. Marshal. The defendant shall remain at the medical center until released to the U.S. Marshal for return to Nebraska.

2. Pursuant to 18 U.S.C. § 3552(b)&(c) and 18 U.S.C. § 4244(b), the Bureau of Prisons shall evaluate the defendant and advise me in writing regarding the following matters: (a) the present medical status of the defendant, with particular emphasis on the defendant's neurological condition; (b) the present mental status of the defendant, with particular emphasis on the defendant's ability to assist, and communicate with, his lawyer during the sentencing process; (c) the degree to which any mental illness played a part in the instant offense as well as the defendant's criminal history; (d) with particular emphasis on avoidance of recidivism, the degree to which the defendant's mental health condition could be treated in prison as compared to a less restrictive community based treatment facility; and (e) in the context of defense counsel's motion for departure or variance and otherwise, any other matters that the Bureau of Prisons or its professional consultants believe are pertinent to the factors set out in 18 U.S.C. § 3553(a). Unless extended by a subsequent order, the evaluation shall be submitted to the court and counsel within 60 days of the defendant being delivered to the medical center.

3. The defendant's counsel shall promptly provide the probation officer with copies of any evaluations or medical records counsel has in his possession.

4. The probation officer assigned to this case (Laura L. Baumann) is requested to facilitate the implementation of this order and coordinate this case with the Bureau of Prisons. The probation officer shall provide the medical center with all materials the officer believes will assist the

medical center in conducting the evaluation, including the presentence report.

5. My chambers shall provide a copy of this memorandum and order to the probation officer and the U.S. Marshals Service.

6. Sentencing is continued until further order of the court. My chambers will calendar this matter for internal review no later than 90 days from this date.

7. Upon receipt of the written report from the Bureau of Prison, I will give the parties an opportunity to submit additional motions or briefs.

8. The motion for examination and report (filing 40) is granted as provided herein.

April 22, 2010

BY THE COURT:

Richard G. Kopf
United States District Judge